

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

MANUEL SAINZ-OCHOA,)	
)	
Petitioner,)	
v.)	Civil Action
)	No. 12-3430-CV-S-RED-H
LINDA SANDERS, ¹ Warden, United)	
States Medical Center for Federal Prisoners,)	
)	
Respondent.)	

ORDER AND JUDGMENT

Pursuant to the governing law and in accordance with Local Rule 72.1 of the United States District Court for the Western District of Missouri, the petition herein for a writ of habeas corpus was referred to the United States Magistrate for preliminary review under the provisions of 28 U.S.C. § 636(b).

The United States Magistrate has completed his preliminary review of the petition herein for a writ of habeas corpus and has submitted to the undersigned a report and recommendation that the petition for a writ of habeas corpus be dismissed without prejudice.

Petitioner has filed exceptions to the report and recommendation of the Magistrate in which he continues to assert that this Court should address his claims because this action is properly filed pursuant to 28 U.S.C. § 2241; that the remedy available to him pursuant to 28 U.S.C. § 2255 is inadequate or ineffective; that he has been denied access to the courts; and that he has been wrongfully denied a compassionate release.

Having fully reviewed the record de novo, the Court agrees with the Magistrate that the

¹The name of the current warden has been substituted as the proper respondent.

petition should be dismissed on the grounds that it is not properly before this Court. Regardless of petitioner's assertions, he has failed to demonstrate that the 28 U.S.C. §2255 remedy is an ineffective or inadequate vehicle to test the legality of his sentence. Accordingly, the Court finds, after de novo review, that the conclusions of the Magistrate should be approved. The issues raised regarding petitioner's contentions that he should have been granted a downward departure by the sentencing court for having waived an administrative deportation hearing, and that the sentencing court did not properly consider his medical issues are not properly before this Court. Additionally, although petitioner has raised issues in his exceptions regarding being denied access to the courts and being wrongfully denied a compassionate release, these are claims that were not raised in his original petition. Therefore, they were not addressed by the Magistrate Judge in the Report and Recommendation, nor are they properly before this Court.

Based on the file and records in this case, it is concluded that the findings of fact, conclusions of law, and proposed actions of the Magistrate are correct and should be approved. It is therefore

ORDERED that petitioner's exceptions filed herein be, and they are hereby, considered and overruled. It is further

ORDERED that petitioner be, and he is hereby, denied leave to proceed in forma pauperis. It is further

ADJUDGED that the petition herein for a writ of habeas corpus be, and it is hereby, dismissed without prejudice.

/s/ Richard E. Dorr
RICHARD E. DORR
United States District Judge

Date: November 6, 2012